

Message Text

LIMITED OFFICIAL USE

PAGE 01 USBERL 00674 01 OF 02 071704Z
ACTION L-03

INFO OCT-01 EUR-12 ISO-00 SCA-01 JUSE-00 PPT-01 VO-03
DODE-00 PM-04 CIAE-00 INR-07 NSAE-00 /032 W
-----071810Z 058396 /50
P 071630Z MAR 77
FM USMISSION USBERLIN
TO SECSTATE WASHDC PRIORITY 4174
INFO AMEMBASSY BONN PRIORITY

LIMITED OFFICIAL USE SECTION 1 OF 2 USBERLIN 0674

E.O.11652: N/A
TAGS: PFOR, GW, WB
SUBJECT: US-FRG EXTRADITION TREATY

REFS: A) BONN 3795, B) STATE 29621, C) 75 BONN A-443 (NOV 17
1975), D) BONN A-66

SUMMARY: OUR RECORDS INDICATE REACTIVATED US-GERMAN
AND BRITISH-GERMAN EXTRADITION TREATIES, AND FRENCH-
FRG EXTRADITION TREATY HAVE BEEN APPLIED TO BERLIN
WITHOUT OBJECTION OR RESERVATION BY ALLIED KOMMANDATURA
(AK). ONLY FRG EXTRADITION TREATIES
WITH OTHER COUNTRIES HAVE BEEN APPROVED FOR EXTENSION
TO BERLIN WITH AK RESERVATION. ACCORDINGLY, WE SEE NO
PROBLEM WITH USE OF CUSTOMARY BERLIN CLAUSE IN PROPOSED
US-FRG EXTRADITION TREATY. END SUMMARY.

1. THE GERMAN-AMERICAN EXTRADITION TREATY SIGNED IN
BERLIN JULY 12, 1930, AND WHICH ENTERED INTO FORCE
APRIL 26, 1931 (8 BEVANS 214), WAS REACTIVATED IN 1956
BY RECIPROCAL AGREEMENT OF THE FRG AND USA. THE ALLIED
KOMMANDATURA, BY BK/L(57)1 OF JANUARY 3, 1957, APPROVED
THE EXTENSION TO BERLIN OF THE REACTIVATED AGREEMENT.
WE DO NOT HAVE A COPY OF THE EXCHANGE OF NOTES WHICH,
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 USBERL 00674 01 OF 02 071704Z

WE ASSUME, REACTIVATED THE AGREEMENT, AND THUS WE DO
NOT KNOW HOW EXTENSION TO BERLIN WAS PHRASED (IF IN
FACT IT WAS STATED) IN THE NOTES. PERHAPS DEPARTMENT
TREATY OFFICE OR AMEMBASSY BONN CAN UNCOVER THESE NOTES.
(PARENTHETICALLY, WE HAVE NOTED THAT TREATIES IN FORCE
DOES NOT RPT NOT CONTAIN A RECORD OF THIS EXCHANGE OF
NOTES, AND DOES NOT RPT NOT FOOTNOTE THIS AGREEMENT AS

APPLICABLE TO BERLIN.) AK WAS INFORMED OF THE REACTIVATION BY LETTER, DATED NOVEMBER 22, 1956 FROM THE BERLIN SENAT. LETTER READS IN PERTINENT PART, QUOTE: IT WAS AGREED UPON BY THE GOVERNMENT OF THE FRG AND THE GOVERNMENT OF THE USA THAT THE GERMAN-AMERICAN TREATY FOR THE EXTRADITION OF FUGITIVES FROM JUSTICE SIGNED IN BERLIN ON 12 JULY 1930 BE REACTIVATED RECIPROCALLY. BERLIN WILL BE INCLUDED IN THE REACTIVATED TREATY AS SOON AS THE AK HAS GIVEN ITS CONSENT. END QUOTE. SENAT LETTER IMPLIES THAT TEXT OF NOTES (WHICH WE ASSUME WERE EXCHANGED) DID NOT MENTION BERLIN. BERLIN MAY ONLY HAVE BEEN MENTIONED ORALLY IN NEGOTIATION TOWARDS REACTIVATION AND THEREAFTER BY FRG IN UNILATERAL DECLARATION.

2. ON FEB 23, 1960, THE FRG AND UK CONCLUDED AN AGREEMENT ON THE EXTRADITION OF FUGITIVE CRIMINALS THUS REACTIVATING THE GERMAN-BRITISH EXTRADITION AGREEMENT OF MAY 14, 1872. WHILE WE DO NOT HAVE TEXT OF THIS AGREEMENT, WE UNDERSTAND THAT ARTICLE II THEREOF REFERS TO EXTENSION TO BERLIN. THE AK POSED NO OBJECTION OR RESERVATION TO EXTENSION OF THIS AGREEMENT TO BERLIN.

3. ON NOVEMBER 29, 1951, THE FRG AND FRANCE CONCLUDED A TREATY ON EXTRADITION. IN NOTES DATED 28 AND 29 NOVEMBER RESPECTIVELY, THE CONTRACTING PARTIES AGREED TO EXTEND THE TREATY TO BERLIN. THE AK POSED NO OBJECTION OR RESERVATION TO ITS EXTENSION

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USBERL 00674 01 OF 02 071704Z

4. ON FEBRUARY 19, 1962, THE EUROPEAN CONVENTION ON EXTRADITION OF DECEMBER 13, 1957 WAS SUBMITTED TO THE AK FOR AK APPROVAL OF ITS EXTENSION TO BERLIN. AK APPROVAL, WITH RESERVATION, WAS GRANTED UNDER BK/L(62)3, MARCH 20, 1962, WHICH READS AS FOLLOWS: QUOTE: THE AK HAS NO OBJECTION TO THE EXTENSION OF THE CONVENTION UNDER REFERENCE TO BERLIN. HOWEVER, THE FRENCH, BRITISH AND US AUTHORITIES DESIRE THAT NO REQUEST FOR EXTRADITION OF ONE OF THEIR OWN NATIONALS IN BERLIN BE GRANTED WITHOUT THE PRIOR APPROVAL OF THE COMMANDANT IN BERLIN OF THE FORCES OF THE NATION CONCERNED. END QUOTE. THE RATIONALE FOR THIS PROVISION WAS PRESENTED IN A MEMORANDUM (LEG/MEMO(62)6, MARCH 17, 1962) FROM THE AK LEGAL COMMITTEE TO THE AK CIVIL AFFAIRS COMMITTEE. THE LEGAL COMMITTEE POINTED OUT THAT UNDER TERMS OF THE CONVENTION, A US, UK OR FRENCH NATIONAL (THOUGH NOT ANY MEMBER OF US, UK OR FRENCH ALLIED FORCES) COULD BE EXTRADITED FROM BERLIN WITHOUT ANY NOTIFICATION WHATEVER TO THE US, UK

OR FRENCH AUTHORITIES IN BERLIN. IT CONCLUDED THAT
QUOTE: SINCE EXTRADITION IS LEGALLY AND CUSTOMARILY
REGARDED AS AN ACT AND PREROGATIVE OF THE HIGHEST
EXECUTIVE AUTHORITY, IT WOULD BE UNFORTUNATE AND, IN
THE OPINION OF THE LEGAL COMMITTEE, UNWISE TO GIVE
THE IMPRESSION THAT THE ALLIES HAVE NO POWER TO ACT
IN BERLIN WITH REGARD TO THEIR OWN CITIZENS IN THE
EVENT THAT A REQUEST FOR EXTRADITION SHOULD BE MADE
UNDER THE PROVISIONS OF THIS CONVENTION. END QUOTE.

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 USBERL 00674 02 OF 02 071741Z

ACTION L-03

INFO OCT-01 EUR-12 ISO-00 JUSE-00 PPT-01 VO-03 SCA-01

DODE-00 PM-04 CIAE-00 INR-07 NSAE-00 /032 W

-----071809Z 058897 /50

P 071630Z MAR 77

FM USMISSION USBERLIN

TO SECSTATE WASHDC PRIORITY 4175

INFO AMEMBASSY BONN PRIORITY

LIMITED OFFICIAL USE SECTION 2 OF 2 USBERIN 0674

5. SIMILAR ACTION WAS TAKEN WITH RESPECT TO THE
EXTENSION TO BERLIN OF THE FEDERAL LAW ON THE
EUROPEAN CONVENTION ON EXTRADITION . UNDER BK/L(65)12
OF FEBRUARY 9, 1965, THE AK, IN POSING NO
OBJECTION TO EXTENSION OF THE FRG LAW TO BERLIN,
ELABORATED THAT QUOTE: IN ACCORDANCE WITH THE TERMS
OF BK/L(62)3, THE ALLIED KOMMANDATURA, WHILE GIVING
ITS AGREEMENT IN PRINCIPLE, MAKES A RESERVATION IN
THE CASE OF NATIONALS OF THE THREE WESTERN POWERS
WHOSE EXTRADITION MAY NOT TAKE PLACE WITHOUT THE
CONSENT OF THE APPROPRIATE SECTOR COMMANDANT. END
QUOTE.

6. COMMENT: AS CAN BE SEEN FROM BK/L(62)3, THE
" APPROPRIATE" SECTOR COMMANDANT REFERS TO THE COMMANDANT
REPRESENTING THE NATIONALITY OF THE PERSON TO BE
EXTRADITED, NOT THE COMMANDANT OF THE SECTOR IN WHICH
THE PERSON IS RESIDENT OR IS ARRESTED. BK/L(68)6,
REFERRED TO IN REFAIR C, SHOULD ALSO BE READ IN THIS
MANNER. END COMMENT.

7. THE FOLLOWING FRG-THIRD PARTY (I.E., NON-US, UK OR FRENCH) EXTRADITION TREATIES WERE ALSO APPLIED TO BERLIN WITH SIMILAR AK RESERVATIONS:(A) DEPORTATION TREATIES WITH NORWAY, SWEDEN AND DENMARK - BK/L(54)31 LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 USBERL 00674 02 OF 02 071741Z

AND BK/L(55)21; (B) EXTRADITION TREATY WITH PORTUGAL- BK/L(67)6. (C) EXTRADITION TREATY WITH TUNISIA - BK/L(68)6; AND (D) EXTRADITION TREATY WITH YUGOSLAVIA- BK/L(72)57. EXTRADITION TREATIES WITH SWITZERLAND AND AUSTRIA, BOTH DONE IN 1974, WERE EXTENDED TO BERLIN WITHOUT RESERVATION. OUR RECORDS INDICATE THESE ARE TREATIES ENTERED INTO IN IMPLEMENTATION OF THE EUROPEAN CONVENTION ON EXTRADITION AND THAT THE AK RESERVATION TO THAT CONVENTION AND TO THE FRG IMPLEMENTING LEGISLATION WAS DEEMED SUFFICIENT. IT WAS DEEMED NOT NECESSARY TO APPLY RESERVATIONS DIRECTLY TO THE EXTENSIONS OF THE SWISS AND AUSTRIAN TREATIES. THE WORDING OF THE AK RESERVATIONS IN THE ABOVE BK/LS DOES VARY AND MAY HAVE LED TO FRG UNCERTAINTY ON THE QUESTION OF WHICH SECTOR COMMANDANT IS CONCERNED IN ANY PARTICULAR CASE. AS STATED ABOVE, THE COMMANDANT CONCERNED IS THE ONE WHO REPRESENTS THE NATIONALITY OF THE PERSON TO BE EXTRADITED.

8. IN THEORY, THE RATIONALE FOR ALLIED RESERVATION TO FRG-THIRD PARTY EXTRADITION AGREEMENTS SUGGESTS THAT FRG-ALLIED POWER EXTRADITION AGREEMENTS SHOULD ALSO BE APPLIED TO BERLIN, SUBJECT TO AK RESERVATION. HOWEVER, SUCH HAS NOT BEEN THE CASE IN PRACTICE. IN THE CASE WHERE THE US MAY REQUEST THE FRG TO EXTRADITE A US NATIONAL FROM BERLIN CERTAINLY NO INJURY TO THE THEORY WOULD ARISE EVEN IN THE ABSENCE OF AN AK RESERVATION. HOWEVER, WHERE THE US REQUESTS THE EXTRADITION OF A FRENCH NATIONAL IN BERLIN, THE THEORY WOULD SUGGEST THAT THE FRENCH COMMANDANT BE PERMITTED TO PASS ON THE REQUEST. PERHAPS SUCH AN EVENT WAS NEVER CONTEMPLATED. ALTERNATIVELY, IT MAY HAVE BEEN CONSIDERED THAT THE ALLIES ARE INDIVIDUAL AS WELL AS JOINT ULTIMATE AUTHORITIES IN BERLIN, AND THAT THUS A REQUEST BY ONE OF THEM TO THE FRG WOULD NOT IMPLY A DEROGATION OF ALLIED AUTHORITY IN BERLIN.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USBERL 00674 02 OF 02 071741Z

9. NONETHELESS, THE PRACTICE IS CLEAR, AND USBER FINDS NO CAUSE WITH RESPECT TO THE PROPOSED US-FRG AGREE-

MENT TO DIVERGE FROM THE PAST PRACTICE; AND ESPECIALLY NOT IN OUR NEGOTIATIONS WITH FRG. ONCE THE TREATY REACHES THE AK FOR APPROVAL; IF THE FRENCH OR BRITISH WISH TO ISSUE A RESERVATION, WE WOULD CONSIDER (AND DUE TO PAST PRACTICE, RESIST) THE SUGGESTION AT THAT TIME. HOWEVER, WE DO NOT BELIEVE FRENCH OR BRITISH WOULD RAISE MATTER.

10. REFTEL B REQUESTS PRACTICAL EXAMPLES OF PROBLEMS POSED IN HYPOTHETICAL FRG REQUEST TO EXTRADITE PERSON SOUGHT IN BERLIN. SUCH SCENARIO WOULD NOT OCCUR. PERSON WANTED BY FRG FOR CRIME COMMITTED IN FRG AND WHO IS FOUND IN BERLIN WOULD BE HANDLED BY FRG AND BERLIN AUTHORITIES AS SIMPLE POLICE MATTER. WHILE ULTIMATE POLICE AUTHORITY IN BERLIN RESTS WITH ALLIES, MUCH AUTHORITY IN SUCH MATTERS HAS BEEN DELEGATED TO LOCAL AUTHORITIES.

11. USBER SHARES FRG POSITION (REFTEL A PARA 12) THAT THERE BE NO DEPARTURE FROM ROUTINE APPLICATION TO BERLIN OF FRG EXTRADITION TREATIES CONCLUDED WITH ALLIES AND THAT NORMAL BERLIN (ARTICLE 33 REPAIR D) CLAUSE BE UTILIZED.
GEORGE

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, AGREEMENTS, BERLIN QUADRIPARTITE MATTERS
Control Number: n/a
Copy: SINGLE
Sent Date: 07-Mar-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977USBERL00674
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770078-0109
Format: TEL
From: USBERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770384/aaaacwqc.tel
Line Count: 248
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 7b3f81bc-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 BONN 3795, 77 STATE 29621, 75 BONN A-443
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 02-Feb-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3183167
Secure: OPEN
Status: NATIVE
Subject: US-FRG EXTRADITION TREATY
TAGS: PFOR, GE, WB
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/7b3f81bc-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009